

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
LAHONTAN REGION

**RESOLUTION NO. R6T-2007-(PROPOSED)**

**RENEWAL OF CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS  
FOR TIMBER HARVEST ACTIVITIES  
IN THE LAHONTAN REGION**

WHEREAS, the California Regional Water Quality Control Board, Lahontan Region, finds:

1. California Water Code section 13260, subdivision (a) requires that any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the State, other than into a community sewer system, shall file with the appropriate Water Board a report of waste discharge ("report of waste discharge" or "ROWD") containing such information and data as may be required by the Water Board.
2. The Water Board has a statutory obligation to prescribe waste discharge requirements except where the Water Board finds that a waiver of waste discharge requirements for a specific type of discharge is consistent with any applicable state or regional water quality control plan and is in the public interest pursuant to Water Code Section 13269.
3. Water Code section 13269 provides that any such waiver of waste discharge requirements shall be conditional, must be updated every five years, and may be terminated at any time by the Water Board.
4. Water Code section 13269 was amended effective 1 January 2005. Water Code section 13269 now includes the following provisions:
  - a. The waiver shall include the performance of individual, group, or watershed-based monitoring, unless the Regional Board determines that the discharges do not pose a significant threat to water quality.
  - b. Monitoring requirements shall be designed to support the development and implementation of the waiver program, including, but not limited to, verifying the adequacy and effectiveness of the waiver's conditions. In establishing monitoring requirements, the Water Board may consider the volume, duration, frequency, and constituents of the discharge; the extent and type of existing monitoring activities, including, but not limited to, existing watershed-based, compliance, and effectiveness monitoring efforts; the size of the project area; and other relevant factors.
  - c. Monitoring results must be made available to the public.
  - d. The Water Board may include as a condition of a waiver the payment of an annual fee established by the State Water Resources Control Board (State Water Board). At the time of this hearing, the State Water Board has not established annual fee regulations with respect to silvicultural operations.

5. The Water Board, on January 8, 2003 and in accordance with Water Code section 13269, adopted Resolution R6T-2003-0001 which established a conditional waiver of waste discharge requirements for discharges related to timber harvest activities in the Lahontan Region.
6. Water Board Resolution No. R6T-2003-0001 provided that the Waiver shall expire on December 31, 2007 with the provision that the "Regional Board may review the Waiver at any time and may modify or terminate the Waiver in its entirety or for individuals, as is appropriate." Staff is bringing this renewal forward at this time to incorporate monitoring requirements pursuant to Water Code Section 13269, clarify requirements for fuel hazard reduction activities, and to add a waiver category for burned area rehabilitation.
7. The Water Board has adopted the Water Quality Control Plan for the Lahontan Region (Basin Plan) that establishes beneficial uses, water quality objectives, waste discharge prohibitions, and implementation policies that apply to waters of the State and discharges to waters of the State within the Lahontan Region.
8. Pursuant to the Basin Plan and State Board Plans and Policies, including State Water Board Resolution No. 88-63, the existing and potential beneficial uses of waters potentially affected by the proposed activity include:
  - a. Agricultural Supply (AGR)
  - b. Aquaculture (AQUA)
  - c. Preservation of Biological Habitats of Special Significance (BIOL)
  - d. Cold Freshwater Habitat (COLD)
  - e. Commercial and Sportfishing (COMM)
  - f. Flood Peak Attenuation/Flood Water Storage (FLD)
  - g. Freshwater Replenishment (FRSH)
  - h. Ground Water Recharge (GWR)
  - i. Industrial Service Supply (IND)
  - j. Migration of Aquatic Organisms (MIGR)
  - k. Municipal and Domestic Supply (MUN)
  - l. Navigation (NAV)
  - m. Hydropower Generation (POW)
  - n. Industrial Process Supply (PRO)
  - o. Rare, Threatened, or Endangered Species (RARE)
  - p. Water Contact Recreation (REC-1)
  - q. Non-contact Water Recreation (REC-2)
  - r. Inland Saline Water Habitat (SAL)
  - s. Spawning, Reproduction, and Development (SPWN)
  - t. Warm Freshwater Habitat (WARM)
  - u. Wildlife Habitat (WILD)
  - v. Water Quality Enhancement (WQE)

9. The Basin Plan contains water quality objectives developed to protect the above-listed beneficial uses of water. The factors in Water Code section 13241, including economic considerations, were considered as required by law during the development of these objectives. Prohibitions, provisions, and specifications contained in this Resolution implement these previously developed water quality objectives. Compliance with water quality objectives will protect the beneficial uses listed in the above paragraph.
10. In 1981, the State Water Resources Control Board (State Water Board): (a) certified a plan entitled "Water Quality Management for National Forest System Lands in California" that was developed and submitted by the United States Department of Agriculture, Forest Service (US Forest Service); (b) designated the US Forest Service as the Water Quality Management Agency (WQMA) for specified activities on National Forest System lands in California that may result in nonpoint source discharges, including timber management, vegetative manipulation, fuels management, road construction and watershed management; and (c) executed a Management Agency Agreement with the US Forest Service for the purpose of implementing the certified plan and WQMA designation.
11. Pursuant to Section 208 of the federal Clean Water Act (33 U.S.C. section 1288), the United States Environmental Protection Agency (USEPA) has approved the State Water Board's certification of the US Forest Service's water quality management plan, and the State Water Board's certification of the practices therein as "best management practices".
12. The Management Agency Agreement between the State Water Board and the US Forest Service contemplates that the Water Boards will waive issuance of waste discharge requirements for US Forest Service timber harvest projects that may result in nonpoint source discharges, provided that the US Forest Service designs and implements its projects to fully comply with State water quality standards.
13. The California Department of Forestry and Fire Protection (CDF) and the California Board of Forestry (BOF) regulate timber harvest activities on nonfederal lands in accordance with the Z'berg-Nejedly Forest Practice Act (Public Resources Code section 4511 et seq.) and the California Forest Practice Rules (California Code of Regulations, title 14, section 895 et seq.).
14. In 1988, the State Water Board: (a) conditionally certified the "Water Quality Management Plan for Timber Operations on Nonfederal Lands" which included those California Forest Practice Rules selected as best management practices and the process by which those rules are administered; (b) designated CDF and the BOF as joint WQMAs; and (c) executed a Management Agency Agreement with CDF and BOF for the purpose of implementing the certified plan and WQMA designations.
15. The Management Agency Agreement between the State Water Board and CDF/BOF required a formal review of the California Forest Practice Rules and administering processes no later than six years from the date of certification. To date, that review has not occurred.

16. To date, the USEPA has not approved the State Water Board's certification of the California Forest Practice Rules and administering processes for regulation of timber harvest activities on nonfederal lands in California.
17. On July 6, 1999, joint recommendations developed by staffs from four Regional Water Quality Control Boards (e.g., Lahontan, North Coast, Central Coast, Central Valley) were submitted to the BOF. Those recommendations detailed numerous amendments needed to the Forest Practice Rules in order to provide better protection for water quality and beneficial uses of water. To date, most of those recommendations have not been adopted by the BOF.
18. The Waiver addresses the joint recommendations by including conditions in addition to the requirements of the Forest Practice Rules to ensure that timber harvest activities will be protective of waters of the state. These conditions include: (1) the discharger must comply with all provisions of the Basin Plans; (2) more stringent criteria for Category 1; (3) mandatory Equipment Limitation Zone for Class III and IV watercourses; (4) mandatory retention of shade trees; (5) notification of pesticide applications; (6) hiring of a registered Civil Engineer or Geologist when certain conditions exist, and (7) the discharger must follow recommendations made by the Water Board staff during Pre-Harvest Inspections.
19. State Water Board Resolution 68-16 ("Statement of Policy with Respect to Maintenance of High Quality Waters in California") requires the Water Board to regulate discharges of waste to waters of the state to achieve the highest water quality consistent with maximum benefit to the people of the State. It further requires that the discharge meet waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that pollution or nuisance will not occur and that the highest water quality consistent with maximum benefit to the people of the State will be maintained. This Waiver is consistent with Resolution 68-16 because it requires compliance with applicable water quality control plans, prohibits the creation of pollution or nuisance, and sets forth conditions that require dischargers to implement additional management practices (beyond those required in the Forest Practice Rules and USFS BMP guidance manuals) to assure protection of beneficial uses of waters of the state and maintain the highest water quality consistent with maximum benefit to the people of the State.
20. The Water Board, acting as the lead agency for this project under the California Environmental Quality Act (Public Resources Code section 21000 et seq.) (CEQA), conducted an Initial Study in 2003 in accordance with California Code of Regulations, title 14, section 15063.
21. The Water Board adopted a negative declaration pursuant to the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) on January 8, 2003. This action to renew the waiver does not require preparation of a subsequent or supplemental environmental document pursuant to California Code of Regulations, title 14, sections 15162 or 15163. The waiver renewal incorporates new monitoring requirements and allows for non-commercial timber harvests of similar environmental effect to activities covered by the existing waiver. Monitoring requirements, in addition to category specific conditions, are incorporated in to the waiver

and will help to ensure that no potentially negative impacts will occur. Non-commercial fuels hazard reduction and forest enhancement projects will be subject to the same conditions as commercial projects. There is no evidence to indicate that substantial changes are proposed for the project, that substantial changes have occurred with respect to the circumstances of the project, or that there is new information of substantial importance with respect to the project, as described in California Code of Regulations, title 14, section 15162, subdivisions (a-d).

22. The Waiver (Attachment A) is in the public interest as described below:

- a. Timber harvest activities are primarily regulated by other agencies, including CDF and the USFS. However, the Water Board has authority to require compliance with the California Water Code;
- b. Without the Waiver, timber harvest activities would continue under authority of other agencies, but such activities may not be subject to appropriate water quality protective conditions;
- c. Without the Waiver, the Water Board could regulate a smaller percentage of timber harvest activities in the Region due to limited staff resources, but with the Waiver, timber harvest activities acting pursuant to the Waiver are subject to enforceable conditions;
- d. The Waiver contains conditions that require compliance with the applicable Regional Board Water Quality Control Plan, including applicable water quality objectives;
- e. The Waiver contains conditions requiring compliance with monitoring and reporting programs that will assist in the protection of water quality and in verification of the adequacy and effectiveness of Waiver conditions;
- f. Compliance with the conditions of the Waiver will result in protection of water quality;
- g. The Waiver does not approve of, or authorize creation of pollution.
- h. The Waiver conditions are subject to enforcement pursuant to Water Code section 13350 in the same way as enforcement of waste discharge requirements;
- i. The Waiver is an effective mechanism given staff resources to regulate a large number of potential discharges;
- j. The Waiver allows staff to continue to participate in the pre-harvest review of proposed timber activities which provides staff the ability to require implementation of protective measures beyond those required by CDF and the USFS for the most critical timber operations.
- k. Forest fuel hazard reduction efforts have grown statewide to address the increased fire threat from decades of fire suppression. This renewed waiver will respond to the need for expedited permitting for low to moderate impact fuels hazard reduction and forest enhancement projects, while still maintaining water quality protection through conditions and a monitoring program.
- l. The Waiver, given limited Water Board staff resources, provides a framework that most effectively utilizes resources to regulate discharges of wastes.

23. The Waiver is consistent with applicable water quality control plans as it requires compliance with the Basin Plan, including applicable water quality objectives, prohibits the creation of pollution or nuisance, and includes eligibility criteria and conditions to protect waters of the State.

24. The Waiver requires compliance with monitoring conditions consistent with the amendments to Water Code section 13269.
25. The adoption of general or individual waste discharge requirements for all timber harvest activities in the Lahontan Region is not feasible at this time. Given the number of Water Board staff and other factors, including the timing of the CDF timber harvest approval process and the time needed to adopt waste discharge requirements, it is not feasible for the Water Board to adopt many individual waste discharge requirements in a year. Additionally, a significant increase of applications is expected for fuels hazard reduction activities on both public and private lands, and expedited permitting for low-impact projects will help meet community needs. General waste discharge requirements on, for example, a watershed-by-watershed approach, would also take a significant amount of time given the large number of watersheds and sub-watersheds in the Region. Thus, without the Waiver, most timber harvest activities would not be subject to any regulation under the California Water Code. Waste discharge requirements do not provide identifiable benefits over this Waiver because the Waiver contains essentially the same conditions that would be included in waste discharge requirements, such as the requirement to comply with water quality control plans, and the Waiver is enforceable to the same extent as waste discharge requirements. The adoption of waste discharge requirements, however, is not precluded because, pursuant to Water Code section 13269, a waiver may be terminated at any time.
26. The Water Board has given notice of the renewed Waiver by publication within the affected counties within the Lahontan Water Board's jurisdiction.
27. The Water Board conducted a public hearing on February 14, 2007 in South Lake Tahoe, California, and considered all testimony and evidence concerning this matter.

**THEREFORE BE IT RESOLVED:**

1. In accordance with Water Code section 13269, the waste discharges related to timber harvest activities in the Lahontan Region shall be regulated by waivers, or individual or general waste discharge requirements.
2. The Executive Officer may enter into an agreement with other entities (e.g., Tahoe Regional Planning Agency) for review activities associated with determining whether equivalent conditions to the Waiver have been met by a discharger. The entity must have the authority and professional expertise to implement and enforce water quality protection conditions. If the Executive Officer determines that the delegated agency changes its policies in a manner that conflicts with this Waiver, or the Basin Plan, the agreement will be terminated.
3. Based on the findings set forth in this Resolution and the administrative record for this matter, the Water Board determines that the renewal of a waiver of waste discharge requirements for discharges related to timber harvest activities as set forth in the Attachment to this Resolution, which contain eligibility criteria, prohibitions, and conditions to assure consistency with applicable water quality control plans, and monitoring conditions, is in the public interest.

4. The Water Board, in accordance with CEQA and the CEQA guidelines, based on findings set forth in this Resolution and the administrative record for this matter, including the information contained in the Negative Declaration adopted in 2003, determines that the renewal of the "Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities" as set forth in Attachment A (Waiver), will not have a significant impact on the environment because activities conducted in compliance with this waiver will be protective of Waters of the State.
5. The Water Board determines that the Monitoring and Reporting Conditions for dischargers seeking enrollment under the Waiver (as set forth in Attachment 2 of the Waiver) are consistent with Water Code section 13269, subdivision (a)(2).
6. The Water Board, based on the above-noted facts and findings, determines that it is not necessary at this time to adopt individual or general waste discharge requirements for waste discharges related to timber harvest activities that meet the eligibility criteria specified in the Waiver and which are conducted in accordance with the conditions specified in the Waiver;
7. The Water Board, based on the testimony received at the aforementioned hearing, and the information contained in the Negative Declaration and the above-noted facts and findings, hereby adopts the Waiver and Monitoring and Reporting Program as set forth in Attachment A.
8. The discharge of any waste not specifically regulated by the Waiver described herein is prohibited unless the discharger complies with Water Code section 13260, subdivision (a) and the Water Board either issues waste discharge requirements pursuant to Water Code section 13263 or an individual waiver pursuant to Water Code section 13269 or the time frames specified in Water Code section 13264, subdivision (a) have elapsed.
9. This Waiver shall not create a vested right and all such discharges shall be considered a privilege, as provided for in Water Code section 13263.
10. Pursuant to Water Code section 13269, this action waiving the issuance of waste discharge requirements for certain specific types of discharges: (a) is conditional, (b) may be terminated at any time, (c) does not permit an illegal activity, (d) does not preclude the need for permits which may be required by other local or governmental agencies, and (e) does not preclude the Water Board from administering enforcement remedies (including civil liability) pursuant to the Water Code.
11. The Water Board Executive Officer, or his/her delegate, may terminate the applicability of the Waiver described herein to any timber harvest activities at any time when such termination is in the public interest and/or the timber harvest activities could affect the quality or beneficial uses of the waters of the State. Substantive changes to US Forest Service or CDF policies or procedures that could potentially degrade water quality or beneficial uses may also result in the Water Board's consideration of termination of this waiver.

12. A waiver of waste discharge requirements for a type of discharge may be superseded by the adoption by the State Water Board or Water Board of specific waste discharge requirements or general waste discharge requirements for that type of discharge.
13. In compliance with Water Code Section 13269, this Resolution and the Waiver described herein shall be reviewed and renewed as necessary no later than five years from the date of adoption of this Resolution.
14. This Waiver shall become effective on February 14, 2007, and shall expire on February 14, 2012, unless terminated or renewed by the Water Board. Dischargers may not seek eligibility under this Waiver after February 14, 2012, unless this Waiver is extended by Water Board action. Dischargers who have gained eligibility under the previous Timber Waiver (prior to February 14, 2007) may continue activities through the February 14, 2012, expiration date unless the Water Board formally terminates this Waiver or the Water Board or staff terminate its applicability to a specific discharge pursuant to Waiver Section IV.
15. The Waiver of Waste Discharge Requirements for Timber Harvest Activities adopted by the Water Board in Resolution R6T-2003-0001 is hereby rescinded.
16. As provided by Water Code section 13350, subdivision (a), any person may be civilly liable if that person is in violation of a waiver condition or waste discharge requirements, intentionally or negligently discharges waste, or causes waste to be deposited where it is discharged, into the waters of the State and creates a condition of pollution or nuisance.
17. The Water Board may review the Waiver at any time and may modify or terminate the Waiver in its entirety or for individuals, as is appropriate.

Certification:

I, Harold J. Singer, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Lahontan Region, on February 14, 2007.

HAROLD SINGER  
EXECUTIVE OFFICER

Attachment:     A. Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities